

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**WANDA B. BRIDGEWATER BROWN**

Claimant

VS.

**STATE OF KANSAS**

Respondent

AND

**STATE SELF INSURANCE FUND**

Insurance Carrier

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Docket No. 204,642

**ORDER**

Respondent appeals from a June 19, 1998 Award entered by Assistant Director David A. Shufelt. The Appeals Board heard oral argument on January 27, 1999 in Topeka, Kansas.

**APPEARANCES**

Claimant appeared by her attorney, Jan L. Fisher of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Scott M. Gates of Topeka, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The Assistant Director granted claimant a work disability finding the circumstances surrounding claimant's termination from her employment with respondent did not require that a comparable wage be imputed. Respondent contends this was error and the disability award should be limited to claimant's percentage of functional impairment. The nature and extent of claimant's disability is the only issue before the Appeals Board.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Assistant Director should be affirmed.

The findings of fact and conclusions of law enumerated in the Award by the Assistant Director are found to be accurate and are adopted by the Appeals Board. Claimant was terminated by respondent for violations of its attendance policy. The Appeals Board agrees with the analysis of the record by the Assistant Director regarding the conflicting testimony as to the reasons for her absences and whether or not claimant complied with respondent's rules. It is clear that some absences were directly traceable to her work-related injury. The Appeals Board likewise finds that in several instances claimant did violate respondent's policies, but the Appeals Board further agrees that these violations of respondent's attendance rules do not invoke the policy considerations of Foult v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995), and Perez v. IBP, Inc., 16 Kan. App. 2d 277, 826 P.2d 520 (1991). Accordingly, the wage claimant was earning prior to her termination should not be imputed to deny her a work disability award. Furthermore, claimant did not have the ability to continue doing her regular job and respondent would not have been able to permanently accommodate the final restrictions imposed by Dr. Sharon McKinney. Finally, the Appeals Board finds that claimant made a good faith effort to find appropriate employment after her termination. Accordingly, her wage loss may be based upon her actual post-accident earnings. Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Assistant Director David A. Shufelt dated June 19, 1998, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Jan L. Fisher, Topeka, KS  
Scott M. Gates, Topeka, KS  
David A. Shufelt, Assistant Director  
Philip S. Harness, Director